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09/492,811	01/28/2000	John W. Becker	7436.100A	1405

7590 03/03/2004  
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EXAMINER

DESAI, HEMANT

ART UNIT	PAPER NUMBER
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3721

27

DATE MAILED: 03/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/492,811

Applicant(s)

BECKER ET AL.

Examiner

Hemant M Desai

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 13-20, 22-26 and 28-62 is/are pending in the application.
- 4a) Of the above claim(s) 60-62 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-20, 22-26 and 28-59 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Election/Restrictions***

1. Newly submitted claim 60-62 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 13-59, drawn to a container, classified in class 493, subclass 311.
- II. Claims 60-62, drawn to method of packaging perishable goods, classified in class 53, subclass unknown.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the process for using the product as claimed can be practiced with another materially different product such as depositing perishable goods into at least a portion of the interior of the inner container.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim

Art Unit: 3721

remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 60-62 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section n 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 13-17, 20, 22-26, 28-51, 53, 55 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Larsson et al. (4413464) in view of Aghassipour (5595320).

Larsson et al. discloses an inner container (fig. 3), designed to be removably inserted into an outer container (9, fig. 5) comprising a bottom (8, fig. 3), collapsible (clearly inherent since material of inner container being flexible, see col. 3, lines 24-25) opposing first and second side walls and front and back walls (fig. 3), each constructed of a flexible material (see col. 3, lines 24-25), the first and second side walls and the front and back walls forming an integral moisture proof seal with the bottom and each other, an integral foldable side, front and back flaps (fig. 3 and fig. 9, the portion of side

and back walls which folds over the content) extending above the side walls, front wall and back wall, comprising a top edge that is substantially straight along its entire length (see fig. 3).

Regarding claim 17, Larsson et al. disclose that front and back walls (see fig. 1) each have a gusseted reinforcement.

Regarding claims 20,22 and 30, Larsson et al. disclose that the front flap is connected to the edges of both the first and second side flaps and they are integral (see fig. 3).

Regarding claims 23-24, Larsson et al. disclose that the top is formed with the front and back flaps folded (see figs. 9 and 10).

Regarding claims 25, 31 and 39, Larsson et al. disclose that the bottom is substantially flat.

Regarding claims 26, 28-29, 35, all flaps are substantially the same height and are connected.

Regarding claims 41, 42, 45, wherein the height of walls and the flaps is adjustable, since after filling the content in the inner container at desirable height the top can be folded over the content (see figs. 9 and 10).

Regarding claims 32-33, 34, 36 and 40, since the inner container is collapsible it is an inherent design feature that side walls are perpendicular to the bottom in the open position and parallel to the bottom in the folded position and the side walls in the folded position have a length and width that is no greater than the bottom.

Regarding claim 44, the flap is movable from an open position extends above the outer container (see fig. 6) to second position wherein it completely closes the inner container and is contained entirely within the outer container.

Regarding claim 46-49, the modified inner container is in direct contact with the outer container, therefore the metalized bottom and the side and front and back walls are in direct contact with the outer container.

Regarding claims 50 and 51, the metalized surface is not located in airtight pouch and not movable independent from the front and sidewalls.

Larsson et al., as mentioned above, disclosed all the limitations, except for an insulating material having a metalized surface and flexible bubble pack material. However, Aghassipour teaches an insulating material having a metalized surface (15, fig. 1a-1b) extending throughout the wall and flexible bubble pack material (14, fig. 1a-1b) to keep cold contents cold for substantially long periods of time (see col. 1, lines 45-65). Therefore it would have been obvious to one having ordinary skill in the art at time of invention to provide an insulating material in the container of Larsson having a metalized surface extending throughout the wall and flexible bubble pack material as taught by Aghassipour to keep cold contents cold for substantially long periods of time.

6. Alternatively, Claims 33-34 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Larsson et al. and Aghassipour and further in view of McCord (72874109).

This rejection is made to further show the well-known use of collapsible container in the packaging art. The modified container of Larsson et al., as mentioned above,

shows the side walls are movable from a first open position substantially perpendicular to the bottom to a second folded position substantially parallel to the bottom.

However, McCord teaches a collapsible container (A, figs. 1-5) having collapsible side walls (A3, figs. 1-3) and the top edge that is substantially straight along its entire length (see figs. 1-3) to provide a strong box and at the same time one which can be readily folded whenever desired (see lines 75-79). Regarding claims 32-33, 36 and 40, McCord teaches that side walls are perpendicular to the bottom in the open position and parallel to the bottom in the folded position (see figs. 2 and 5) and the side walls in the folded position have a length and width that is no greater than the bottom (see fig. 5). Therefore it would have been obvious to one having ordinary skill in the art at time of invention to provide a collapsible side walls box structure as taught by McCord in the modified inner container of Larsson et al. to provide a stronger box and at the same time one which can be readily folded whenever desired.

7. Claims 18-19, 52, 54-57 and 59 is rejected under 35 U.S.C. 103(a) as being unpatentable over Larsson et al. (4413464) in view of Aghassipour (5595320), and further in view of Becker (4929094) or Shea (5314087).

The modified container of Larsson et al., as mentioned above, disclosed all the limitations, except for the inner container is not adhered to the outer container when it is inserted therein. However, both Becker and Shea teach to insert the inner container into outer container without adhering for convenience to remove the inner container from the outer container. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the inner container without

adhering to the outer container when it is inserted therein as taught by Becker and Shea in the modified container of Larson for convenience to remove the inner container from the outer container.

Regarding claims 18-19, 55-57, Backer teaches to selectively closed the inner container without forming a moisture proof seal (see col. 3, lines 25-30) to secure the flaps (see col. 3, lines 25-30).

### ***Response to Arguments***

8. Applicant's arguments filed 6/24/2003 have been fully considered but they are not persuasive. Applicant's argument on page 17, first and second paragraph, see the rejection of claims 18-19, 52, 54-57 in the office action. Regarding the adjustability of the height of inner container note that Larsson et al. sidewalls and flaps are flexible and therefore they are adjustable. Regarding the term "removably inserted" in claims 13, 34, 37, 42, 43, 52, 54 and 55, does not define any claimed structure in these claim and being disclosed by the modified container of Larsson et al. ('464). Further, in the broadest term Larsson's inner container can be removed from the outer container by tearing the inner container from the outer container.

In response to Applicant's argument that there is no suggestion to combine the references, the Examiner recognizes that references cannot be arbitrarily combined and there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiya*, 184 USPQ 601 (CCPA 1915). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the



Art Unit: 3721

combination of disclosures take, as a whole would suggest to one of the ordinary skill in the art. *In re McLaughlin*, 110 USPQ 209 (CCVA 1971). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 USPQ 545 (CCPA 1969). IN this case, Aghassipour teaches an insulating material having a metalized surface (15, fig. 1a-1b) extending throughout the wall and flexible bubble pack material (14, fig. 1a-1b) to keep cold contents cold for substantially long periods of time, and taking this motivation as whole would suggest to one of the ordinary skill in the art to provide an insulating material in the container of Larsson having a metalized surface extending throughout the wall and flexible bubble pack material as taught by Aghassipour to keep cold contents cold for substantially long periods of time. Examiner did not rely on Aghassipour reference for inner and outer container, since, primary reference ('464) does disclose outer and inner container.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hemant M Desai whose telephone number is (703) 308-5830. The examiner can normally be reached on 7:00 AM-5: 30 PM, Mon-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3721

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hemant M Desai  
Examiner  
Art Unit 3721

HMD



Stephen F. Gerrity  
Primary Examiner